

Recommendations

Based upon our investigation of the misconduct of the Bush Administration, we recommend that Congress should consider a number of actions that could deter such abuses in the future, including:

- *Exercising its oversight responsibility to obtain information from the Administration* -- A number of bills have been introduced that would provide authority to investigate the various allegations identified in this Report. These include: (i) H. Res. 635, introduced by Rep. Conyers, establishing a Select Committee to investigate the various charges identified in Part I of this Report (The Committee would be equally comprised of Democrats and Republicans, selected by the Speaker and the Minority Leader and make appropriate recommendations if agreed to on a bipartisan basis); Sen. Robert Byrd (D-WV) and Rep. Conyers introduced S. 2362 and H.R. 5223, to establish a blue ribbon commission to investigate the various allegations identified in Part II of this Report; and (iii) H.R. 3003, introduced by Rep. Waxman and nineteen other Ranking Members, as well as the House Democratic Leader and House Democratic Whip, would establish a bipartisan blue ribbon commission to investigate the alleged torture and other abuses at Guantanamo and Abu Ghraib. None of these bills have received any hearings or other consideration by the Republican Majority.
- *Reaffirming that the Foreign Intelligence Surveillance Act and the criminal code contain the exclusive means for conducting domestic surveillance* -- Under the guise of exercising oversight of the warrantless surveillance, Republican Members of Congress have introduced legislation that merely attempts to grant the program constitutional and legal validation. To the extent legislation is needed to improve intelligence gathering capabilities, the preferable approach is to reaffirm that FISA and the criminal code contain the exclusive means for conducting domestic surveillance, to the extent necessary, and increasing resources for warrantless FISA wiretaps that may be authorized under current law. Two bills have been introduced this Congress to further this goal: (i) H.R. 4570, introduced by Reps. Jane Harman (D-CA) and Conyers and (ii) H.R. 4976, introduced by Reps. Adam Schiff (D-CA) and Jeff Flake (R-AZ).
- *Requiring the President to report on the pardon of any individual who could implicate the President or other officials implicated by pending investigations* -- Congress should consider legislation, such as H.R. 5961, requiring that the President notify Congress of the pardon of any individual who is or was an Administration official. The notification should include the nature of the pardon and the effects it might have on any pending investigations. Such legislation is needed to allow for full disclosure should the President pardon individuals as a means of preventing an investigation from running its course and, perhaps, uncovering information critical of the Administration. This is a particular concern because the President refused

to respond to a July 25, 2005 letter from Rep. Conyers seeking his assurance that he would not pardon any former or current officials involved in the leak of CIA officer Valerie Plame Wilson's name.

- *Requiring the President to notify Congress upon the declassification of classified information* -- The Administration appears to have selectively leaked numerous items of classified information to buttress their case for war, and that President himself secretly authorized the declassification of information without notice to the media in an effort to respond to Ambassador Wilson's op-ed concerning the Administration's uranium claims. The public would have better access to information were the White House to issue public notices upon declassification. Sen. Dianne Feinstein (D-CA) has introduced S. 2660 to require such notice.
- *Enhancing protections for national security whistleblowers* -- Federal employees should be encouraged to try and correct and report wrongdoing at federal agencies. Among other things, Congress should consider limiting exemptions from the whistleblower protection laws and permitting whistleblowers to report problems directly to Congress and the President instead of having to go through an agency's chain of command. Sens. Daniel Akaka (D-HI) and Frank Lautenberg (D-NJ) have proposed whistleblower reforms in S. 494 and S. 2285. Congress also should consider legislation providing for a procedure to enable whistleblowers to enforce their rights against reprisal by protecting them from Executive Branch assertions of state secrets privileges, as provided for in H.R. 5112, introduced by Reps. Tom Davis (R-VA) and Henry Waxman (D-CA).
- *Strengthening the authority of the Privacy and Civil Liberties Oversight Board* -- Upon the recommendation of the 9-11 Commission, Congress created a board to review the privacy and civil liberties implications of White House policies. Unfortunately, the Board was established within the Executive Office of the President instead of as an independent agency. Under H.R. 1310, introduced by Rep. Carolyn Maloney (D-NY), the Board would be independent of the President and possess subpoena powers.

Congress also should take additional measures to address the threat of terrorism, including:

- *Increasing funding for COPS and other first responders and base anti-terror funding on risk not politics* -- Despite the success of the Community Oriented Policing Program in reducing crime across the country and the fact that local police will be the first on the scene at any terrorist or other catastrophic event, the Bush Administration continues to seek cuts in the program's funding. Congress should make it a national priority to fully fund COPS and provide firefighters, emergency workers, and police with the training, personnel, and technology they need. In addition, anti-terrorism funding for state and local governments should be based on need and terror risk, not politics. Such proposals have passed the House but were not considered in the Senate in the form of section 128 of H.R.

3199, the House-passed extension of the PATRIOT Act; H.R. 1544, which was introduced by then-Homeland Security Committee Chairman Christopher Cox (R-CA); and H.R. 1419, introduced by then-Rep. Robert Menendez (D-NJ).

- *Implementing the 9/11 Commission recommendations, including enhancing port, infrastructure, and chemical plant security* -- Only a small percentage of incoming cargo is screened for potential terrorist threats, such as dirty bombs. While the House passed H.R. 4954 to increase security, that bill failed to require screening of all cargo, to increase the number of radiation portal monitors, and to require a review of contracts for port operations where a terrorist-sponsored entity might be involved. We also must secure our airports, mass transit systems, chemical and nuclear plants, and food and water supplies. Finally, this would include ensuring that would-be terrorists do not have access to loose nuclear materials.
- *Banning corporate trade with state sponsors of terror and eliminating sovereign immunity protections for state sponsors of terror* -- Current law prohibits U.S. companies from engaging in trade with terrorist nations, but they are able to circumvent the restriction by setting up foreign subsidiaries. The law should be extended to apply to foreign subsidiaries. In the 108th Congress, Sen. Frank Lautenberg (D-NJ) offered amendment S.A. 3151 to a Senate bill, S. 2400, to accomplish this goal. Also, many victims of terror and their families, have sued foreign states for damages arising out of terrorism. Unfortunately, the State and Justice Departments have opposed such lawsuits on the grounds that sovereign immunity protects foreign states from U.S. law. Rep. Jim Saxton (R-NJ) has introduced legislation, H.R. 865, to permit private lawsuits against foreign states for terrorism.
- *Enhancing Laws Against Wartime Fraud* -- Legislation should be enacted to extend the statutes of limitations for criminal fraud perpetrated by corporations against the United States during wartime. In the 108th Congress, Rep. Rahm Emanuel (D-IL) introduced H.R. 3673 to penalize wartime profiteering, whether during a declared war or military conflict.

Conclusion

Our examination of both major matters described in this Report, “The Downing Street Minutes and Deceptions, Manipulation, Torture, Retribution and Coverups in the Iraq War,” and “Unlawful Domestic Surveillance and the Decline of Civil Liberties Under the Administration of George W. Bush,” has revealed a number of persistent and disturbing pattern of conduct involving the Bush Administration. This includes:

- The apparent willingness of members of the Bush Administration to see their actions as not being subject the law.
- A number of false and misleading statements made by members of the Bush Administration which helped to cover up or delay disclosure of their conduct.
- Using the power of the executive branch to threaten and undermine political opponents of the Bush Administration.
- Using the tragic events of September 11 as a means of justifying unrelated objectives of the Administration.
- Acting to limit possible oversight and accountability for the Administration’s actions.

Thus, over the last six years, the Bush Administration appears to have ignored a number of laws and legal requirements, such as executive orders concerning the protection of national security secrets; supervising an investigation of the Valerie Plame leak in a manner inconsistent with conflict of interest requirements; mistreatment of detainees in possible violation of international and domestic laws and treaties concerning torture and cruel, inhuman and degrading treatment; warrantless domestic wiretaps and customer telephone databases in contravention of the Foreign Intelligence Surveillance Act, the Stored Communications Act and the Communications Act; and failure to notify Members of the Intelligence Committees of intelligence activities in violation of the National Security Act.

At the same time, all too frequently, members of the Bush Administration appear to have placed political expediency above veracity. Whether it was then White House Press Secretary stating that “I spoke with [Karl Rove and Scooter Libby], so that I could come back to you and say that they were not involved” in the leak of Valerie Plame’s name,” or President Bush declaring that “any time you hear the United States government talking about a wiretap it requires ... a court order,” there have been numerous instances where political convenience appears to have taken precedence over the principle of communicating fully, frankly, and honestly with the American people and their representatives.

Our Report has also found a number of instances where public criticism of the Bush Administration and their policies has placed the careers of government officials and even their families' careers in jeopardy. Thus, Bunnantine Greenhouse was demoted from the Army Corps of Engineers after she testified the Administration was improperly favoring Haliburton in awarding contracts in Iraq; Valerie Plame was outed as a covert CIA agent after her husband wrote that the Iraq uranium claims were false; and attorneys at the Department of Justice who questioned the NSA's warrantless wiretapping program "did so at their own peril" according to government sources.

In terms of taking political advantage of the September 11 tragedy, we learned that as early as January 30, 2001, former Bush Secretary of Treasury Paul O'Neill stated that "[f]rom the beginning It was all about finding a way" to get rid of Saddam, with the President saying "go find me a way to do this;" while immediately after the September 11 attacks, the White House told Wesley Clark, "[y]ou got to say this is connected This has to be connected to Saddam Hussein." Both Vice President Cheney and General Hayden sought to justify the Administration's domestic spying program by claiming it would have prevented the September 11 attacks, even though this was contrary to the findings of the 9-11 Commission, causing Commission Member Bob Kerry to assert that the Administration claim was "patently false and an indication that [Hayden] is willing to politicize intelligence and use false intelligence to help the President."

The single overriding characteristic running through all of the allegations of misconduct identified in our Report has been the unwillingness of the Bush Administration to allow its actions to be subject to any form of meaningful outside review. Not only were 122 Members of Congress unable to obtain any response to their questions posed regarding the Downing Street Minutes, but neither the House nor the Senate has ever engaged in any serious review of the facts surrounding the NSA domestic spying programs. The institutional damage resulting from such constitutional neglect will likely be felt for many years, if not generations.

The lesson of this Report is that if we allow intelligence, military and law enforcement to do their work free of political interference, if we give them requisite resources and modern technologies, if we allow them to "connect the dots" in a straight forward and non-partisan manner, we can protect our citizens. We all want to fight terrorism, but we need to fight it the right way, consistent with our Constitution, and in a manner that serves as a model for the rest of the world.